GOVERNMENT OF ANDHRA PRADESH

ABSTRACT

E, I&I Department – Kakinada SEZ Pvt Ltd - Proposal of M/s.Kakinada SEZ Pvt Ltd for conversion of Captive Port in Kona village, Thondangi Mandal, East Godavari District, Andhra Pradesh into Commercial Port through Swiss Challenge Approach duly following the procedure laid down in APIDE Act, 2001, Draft PPP Rules, 2012 and as per the AP Port Policy, 2015 – Orders - Issued.

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ENERGY, INFRASTRUCTURE & INVESTMENT (PORTS.II) DEPARTMENT

G.O.MS.No. 20 Dated: 20-09-2017

Read the following;

1. G.O.Ms.No.10, I&I (Ports.I) Dept, dated 03-12-2007.
2. Letter No.3855/P.I(1)/2007, TR&B Dept, dated 13-12-2007.
3. Letter dated 29-04-2016 from the Vice President & Head –Ports, Kakinada SEZ Pvt Ltd, Hyderabad.
4. From the Director of Ports, GoAP, Kakinada, Letter No.DoP/D2/3502/2011., dated 10-05-2016, 19-05-2016 and dated 25-05-2016.
5. G.O.Ms.No.24, E, I&I Dept., dated 01-07-2016.
6. G.O.Ms.No.33, E, I&I (Ports.II) Dept., dated 23-02-2017.
7. Letter No.KSEZ/SCP/UT/01, Dt.14-06-2017 from the Vice President & Head –Ports, Kakinada SEZ Pvt Ltd, Hyderabad.

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ORDER;

Orders were issued in the G.O. first read above declaring the Kakinada Special Economic Zone Port as Minor Port in East Godavari District. Further, permission was accorded to M/s.Kakinada SEZ Pvt Ltd to construct captive port within SEZ to handle only SEZ cargo subject to certain conditions laid down in the reference 2nd read above.

2. The Vice President & Head–Ports, Kakinada SEZ Pvt Ltd, Hyderabad while submitting the Suo-motu proposal for conversion of Kakinada SEZ Captive Port to a commercial Port as per Andhra Pradesh Port Policy, 2015 & Andhra Pradesh Infrastructure Development Enabling Act, 2001 has informed that Kakinada SEZ Pvt Ltd, a subsidiary of GMR Group, is establishing a port based multi-product SEZ spread in an area of over 10,000 acres in U.Kothapalli & Thondangi Mandals of East Godavari District, Andhra Pradesh. He has further stated that as per the A.P.Port Policy-2015, captive ports would be permitted to handle commercial cargo in line with other minor ports by following the Swiss Challenge Policy as enshrined in APIDE Act.2001 and that in line with the Port Policy, 2015, KSEZ desires to convert the captive port license into a commercial port license through a Swiss Challenge mode as detailed in APIDE Act 2001 and requested the Government to take further steps.

3. In the reference fourth read above, the Director of Ports has furnished the detailed remarks to the Government on the Swiss Challenge proposal and documents furnished by M/s.KSEZ Pvt Ltd.

4. Government after detailed examination and following due procedure have issued orders vide G.O. fifth read above, approving the proposal of M/s.KSEZ Ltd., for conversion of the Captive Port in Kona village, Thondangi Mandal, East Godavari District to the Commercial Port through Swiss Challenge Approach, duly following the procedure laid down in APIDE Act, 2001, Draft PPP Rules, 2012 and as per the AP Port Policy, 2015 and the Director of Ports, Kakinada was instructed to appoint a Transaction Advisory Firm who has the requisite technical, financial and legal experience for appraising the suo-motu proposals submitted by the project proponent to take forward under Swiss Challenge Approach. He was also instructed to form a Tender Evaluation Committee to review the submissions of the Transaction Advisory Firm.

5. M/s.INCAP has appointed M/s.Mc.Kinsey & Company Inc., as Transaction Advisory Firm to the Director of Ports, Kakinada for appraisal of the Suo-Motu Proposals by M/s.KSEZ Pvt Ltd.

6. Subsequently, Government have issued orders constituting the Tender Evaluation Committee vide G.O.6th read above. After Evaluation of the Proposal furnished by KSEZ Ltd., the Transaction Advisor i.e., M/s.Mc.Kinsey & Company Inc has furnished Financial Assessment Report and Detailed Proposal Evaluation Report.

7. The Tender Evaluation Committee met several times and in its 6th Meeting, it was concluded that the Original Project Proponent (M/s.KSEZ Pvt Ltd) needs to furnish the re-revised Draft Concession Agreement (DCA) and undertakings based on the recommendations made by the Tender Evaluation Committee. Accordingly, M/s.KSEZ Ltd., have furnished the final Revised Draft Concession Agreement and revised undertaking vide reference 7th read above for the obligation relating to leasing of KSEZ Port land for use by Concessionaire along with undertaking for submission of necessary security clearances forms in accordance with the guidelines issued by Ministry of Home Affairs based on the recommendations of the Tender Evaluation Committee.

8. The Tender Evaluation Committee negotiated with the OPP (M/s.KSEZ Pvt Ltd) and the OPP has agreed for the following:

I. The OPP has agreed for reduction of stake of KSPL/KDWP promoters in the proposed port project to less than 26% not later than 6 months before COD.

II. The OPP has agreed for development of the project with 1,944 acres and has informed that 1494.71 acres have been alienated by APIIC to them, 26.52 acres are yet to be handed over by APIIC while 289.77 acres for the project is under process of alienation & the sea accreted land is ~133 acres. In order to ensure a fair process and enable full development of the sea front, OPP has agreed to offer the entire land as detailed above as and when received for the development of the project.

III. The OPP has agreed to execute legally enforceable agreement/undertaking ensuring that it would grant lease to the prospective concessionaire for the period coterminous with the concession period/extended period on the terms as per AP Port policy or any other law governing land being leased for the port by the GoAP.

9. The Director of Ports vide his letter dt.22-06-2017 has submitted a detailed report and requested the Government to address the concerned authority to obtain a No Objection Certificate from APIIC on the following in connection with the Suo-Motu Proposal furnished by the KSEZ.

(i.) No Objection Certificate from APIIC for extending the time line up to September, 2021 (i.e., 6 years–originally permitted 3 years and extension 3 more years) for construction of Commercial Port under Swiss Challenge proposed by KSEZ, as per G.O.Ms.No.24, E,I&I(Ports-II)Department, Dated 01-07-2016.

(ii.) No Objection Certificate from APIIC for leasing of land to any other successful bidder, in case KSEZ is not the selected Concessionaire under Swiss Challenge proposal.

(iii.) No Objection Certificate from APIIC for transfer of land (allotment) to Wholly Owned Subsidiary (WOS) Company of KSEZ for development of Commercial Port in case KSEZ is the successful bidder.

10. In view of the circumstances explained above, Government after careful examination and by following due procedure hereby issues the following orders:

(I.) Approve the final Revised Suo-Motu Proposal of M/s.KSEZ Ltd., along with Revised DPR and Revised DCA for conversion of their Captive Port in Kona village, Thondangi Mandal, East Godavari District, Andhra Pradesh to Commercial Port through Swiss Challenge approach duly following the procedure laid down in the APIDE Act, 2001, Draft PPP Rules, 2012 and as per the AP Port Policy, 2015 except for specific approval of items III, IV, V and VI as per the orders issued vide G.O.Ms.No.24, E, I&I Dept., dated 01-07-2016 and permit the Director of Ports, AP, Kakinada to proceed with the Swiss challenge approach as above duly following various Supreme Court judgments on Swiss Challenge process.

(II.) Approve the Draft RFQ for inviting competing counter proposals.

(III.) The Industries & Commerce Department shall take necessary action for modification to G.O.Ms.No.74, Industries & Commerce (Infra) Dept., dated 14-9-2015 to permit Project Establishment period of 4½ years from the date of extension i.e., allowing 6 months for Swiss process and one year for financial closure and 3 years for construction of the Port as per the requirement under Swiss Challenge process.

(IV.) The Industries & Commerce Department shall take necessary action:-

a. to permit M/s.KSEZ to sub-lease the land to the Concessionaire in case they are not the successful bidder by collecting the lease charges as per the A.P.Port Policy, 2015; and

b. They shall also take necessary action to permit M/s.KSEZ to retain the ownership of the land in case, they are the successful bidder.

(V.) The Tenure of the Concession Period will be Thirty (30) years from the Commercial Operations Date of the Port with extended spells of 10+10 years.

(VI.) The suo-motu proposal preparation cost of M/s.KSEZ will be accepted as bid security.

(VII.) To protect the financial interests of the Government, the Director of Ports, AP, Kakinada is instructed to direct the Transaction Adviser to collect the bench mark reference revenue share keeping in view of the revenues which would have accrued to the Government had it been a captive Port and ensure that there is no financial loss to the Government.

11. The Director of Ports, AP, Kakinada shall take necessary further action in the matter.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

AJAY JAIN
PRINCIPAL SECRETARY TO GOVERNMENT

To
The Director of Ports, AP, Kakinada.
The Industries & Commerce Department
M/s.KSEZ Pvt Ltd, Hyderabad through Director of Ports, AP, Kakinada.

The VC&MD, INCAP, Vijayawada.
The Chairman, A.P. Infrastructure Authority, Vijayawada.
PS to Prl.Secretary to C.M.
PS to Chief Secretary to Govt, A.P.,
PS to Prl.Finance Secretary.
PS to Prl.Secretary, E, I&I Department.
PS to Secretary, I&C Dept.,
PS to Secretary to Legal Affairs, Law Department.
The Law (H) Department.
The G.A (Cabinet) Department.
Sf/Sc (C.No.227/Ports.II/2016).

// FORWARDED :: BY ORDER //

SECTION OFFICER